

LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Land and buildings transaction tax: second homes etc.

Part 4 of schedule 2A – Certain types of buyer

Paragraph 5 of schedule 2A – Joint buyers

36. Paragraph 5 – which is relevant to chargeable transactions - deals with the not uncommon case where a couple buy a dwelling. Where the couple each take a share of the ownership of the title they will be treated for the purposes of paragraph 2 of schedule 2A as if they 100% own the dwelling. Paragraph 12 of schedule 2A – which is relevant to existing ownership - is also relevant since it deems each person that is jointly entitled to the ownership of a dwelling to be the owner of the dwelling. The definition of “jointly entitled” covers common property in Scots law.
37. The same also applies to other cases where there are two or more buyers, in other words to cases where the jointly entitled persons are not a couple. For example, if siblings were to inherit equal shares in the ownership of a dwelling, each sibling would be treated as the 100% owner for the purposes of paragraph 2 of schedule 2A.
38. The effect of paragraph 5 of schedule 2A is that the conditions in paragraph 2(1)(c) and (d) and 3(1)(c) will be met if they are met in relation to any one of the joint buyers, even though they may not be met in relation to others. So if two people, A and B, who each currently own a dwelling which they occupy as their main residences, jointly buy a dwelling to move into as their new joint main residence and A sells his or her existing dwelling while B retains his or her existing dwelling to rent out, the additional amount is payable on the joint purchase because B is not replacing his or her main residence, even though A is. Similarly if one of the joint buyers is not an individual, then the conditions in paragraph 3(1)(c) will be met in the same way as if there was one buyer who was not an individual.
39. Interpretative provisions of the 2013 Act relevant to paragraph 5—

“buyer”	section 7
“chargeable transaction”	section 15
“jointly entitled”	section 65.